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No. 90 - 669

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

PHILADELPHIA MARINE TRADE ASSOCIATION,
Petitioner,

v.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, ET AL,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

AND SUPPLEMENTAL APPENDIX

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QUESTIONS PRESENTED

1. Did the Court of Appeals correctly hold that a federal court may not issue an injunction against a union or its officers to enjoin "wild cat picketing" during the life of a collective bargaining agreement containing a no-strike--arbitration provision, absent a finding of union responsibility for the picketing?

2. Did the Court of Appeals correctly hold that the question of union responsibility for breach of a collective bargaining agreement under Section 301 of the Labor-Management Relations Act is to be governed solely by agency principles?

THE PARTIES

The parties to this case are as follows;

Petitioner: The Philadelphia Marine Trade Association ("PMTA")

Respondents: Local 1291, International Longshoremen's Association; Joseph Hill, President of Local 1291, International Longshoremen's Association; and Warren Anderson, a Business Agent of Local 1291, International Longshoremen's Association. Respondents are referred to collectively as the "Union".

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RESPONDENTS' BRIEF IN OPPOSITION

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

This case arises out of "wild cat picketing" by approximately 25 members of the respondent local Union. The picketing arose out of the unhappiness of these members as a result of an agreement reached between the Union and PMTA over the process for selecting longshore gangs to be the regular "house" gangs for a particular Employer-member of PMTA. The lower courts agreed that a preliminary injunction could not issue against the Union

since PMTA had failed to establish Union responsibility for the picketing under common-law agency principles.[1]

Petitioner PMTA maintains that under the *"Boys Market"* exception to the Norris-LaGuardia Act, an injunction may issue against the Union and its officers even when it is conclusively established that neither the Union nor its officers bears any responsibility for the picketing. This Court has never so held. Nor has any Court of Appeals rendered such a holding subsequent to this Court's decision in *Carbon Fuel Co. v. United Mineworkers of America*, 444 U.S. 212 (1979).

The Court of Appeals correctly applied well-settled law to the facts of this case and correctly affirmed the District Court's denial of a preliminary injunction. Accordingly, the Union respectfully requests that the Court deny the *Petition*.[2]

OPINIONS BELOW

The District Court's Opinion is not reported and is reproduced as Appendix C to the *Petition* (App C at 14a-24a). The Opinion of the Court of Appeals (Seitz, Circuit Judge) is reported at 909 F. 2d 754 (3rd Cir. 1990) and is reproduced as Appendix A to the *Petition* (App. A at 1a-12a).

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1. The Lower Courts did not find it necessary to reach the questions of whether there was an underlying arbitrable dispute or whether the principles of equity mandated by Section 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107, had been satisfied. The Union had pressed these defenses in the courts below.

2. The "Introduction" to the *Petition* claims that "Chaos and industrial strife will occur not only in the maritime industry but in many other industries unless this Court grants review of this case." Nothing in the record supports this bald proposition.

STATUTES INVOLVED

The relevant statutes, which are set forth verbatim in the Appendix hereto, are as follows:

1. Sections 301 (a), (b), (c) and (e) of the Labor-Management Relations Act of 1947 ("LMRA"), 29 U.S.C. §§ 185 (a), (b), (c) and (e).

2. Sections 4 and 7 (a) of the Norris-LaGuardia Act, 29 U.S.C. §§ 104 and 107 (a).

STATEMENT OF THE CASE

The Statement of Case presented by PMTA in the *Petition* contains a significant mis-statement while omitting certain facts which are vital to an understanding of this case.

The Union and its members did not refuse to work the vessel in question on August 7, 1989 and the District Court did not so find. Instead, the District Court found that on the morning of August 7, 1989 at approximately 7:30 A.M., 20 to 25 pickets blocked the entrance to the Southern Stevedoring facility in Camden, N.J. in protest of the method agreed upon by PMTA and the Union for selection of Southern Stevedoring's house gangs.

The District Court expressly found that the Union neither instigated, supported, ratified nor encouraged this picketing and that the picket line "occurred without authorization of defendants Local 1291, Hill or Anderson". (App. C to *Petition* at C-17a and C-23A) Accordingly, the District Court concluded that the pick-

eting constituted an *unauthorized* "wildcat" strike.[1]

These findings by the District Court were not challenged as "clearly erroneous" by PMTA on its appeal to the Third Circuit.

The District Court held that in order for a preliminary injunction to issue, PMTA had to satisfy its burden "of showing a reasonable likelihood of success on the merits on the common-law theory of agency." Since there was no evidence indicating that the Union had instigated, supported, ratified or encouraged the action of the picketers, the District Court concluded that PMTA had failed to satisfy its burden of showing a reasonable likelihood of success on the merits with respect to establishing responsibility on the part of the Union and its officers for the unauthorized strike of certain of its members.

The Court of Appeals affirmed, noting that "the injunction exception to Norris-LaGuardia" established by this Court in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) is a "narrow" one and that before *Boys' Markets* can be applied, there must be a threshold determination as to whether the plaintiff employer is entitled to any relief under Section 301 of the LMRA - "That is, we must determine whether the Union was responsible for a breach of the collective bargaining agreement." (App. A of *Petition* at A-6a and A-7a)

Relying on this Court's decision in *Carbon Fuel v. United Mineworkers of America*, 444 U.S. 212 (1979) the Court of Appeals held that Union responsibility under Section 301 is to be "governed solely by agency principles" and that "as a precondition to injunctive relief against the Union under *Boys' Markets*, a plaintiff must prove agency as required by Section 301 (b) and

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1. The District Court also found that Local 1291's President, Joseph Hill, made efforts to persuade the picketers to terminate their activity. In addition, the District Court concluded that the picketing activity of 20 to 25 persons did not constitute "mass action."

(e)." Since the District Court had found that the Union did not instigate, support, ratify or encourage the strike and PMTA had not contended that these findings were clearly erroneous or legally incorrect, the Court of Appeals affirmed the decision of the District Court that PMTA was not entitled to the issuance of a preliminary injunction.[4]

REASONS WHY THE PETITION SHOULD BE DENIED

I. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH THIS COURT'S DECISION IN *BOYS' MARKETS* OR ANY OTHER CASE.

PMTA implies that this Court's holding in *Boys' Markets v. Retail Clerks Local Union 770*, 398 U.S. 235 (1970) permits the issuance of an injunction against a Union and its officers in connection with a strike or picketing, regardless of whether there is a finding of Union responsibility for such strike or picketing. Nothing in *Boys' Markets* so holds. On the contrary, this Court clearly indicated that before an injunction can issue under *Boys' Markets*, there must be consideration of whether, *inter alia*, a breach of the collective bargaining agreement is occurring and continues. (398 U.S. at 254).

Clearly, before any injunction can issue against a labor organization and its officers under the exception to Norris-LaGuardia carved out by *Boys' Markets*, a District Court must consider whether the labor organization and its officers are in fact

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4. The Court of Appeals found that it was not necessary to address certain other defenses raised by the Union including the question of whether there was an underlying arbitrable issue or whether principles of equity had been satisfied. Moreover, the Court of Appeals concluded that since the District Court had found that there was no mass action, it was not necessary to consider whether mass action constituted a legal basis, apart from agency, for finding a Union responsible for "wildcat picketing."

responsible for such breach. Nowhere in *Boys' Markets* is there any suggestion that an injunction can issue against a labor organization and its officers when there is absolutely no evidence that they bear any responsibility for the strike or picketing in question.

In *Carbon Fuel v. United Mineworkers of America*, 444 U.S. 212 (1979) this Court left no doubt that questions involving legal responsibilities of a labor organization and its officers for actions of its members are to be governed by the common law of agency.

Thus, as PMTA notes in its *Petition*, this Court held in *Carbon Fuel*:

"The legislative history is clear that Congress limited the responsibility of Unions for strikes and breach of contract to cases when the Union may be found responsible according to the common-law rule of agency." (444 U.S. at 216)

Accordingly, the action of the District Court and Court of Appeals in concluding that in a wild-cat strike setting, a Union can only be subject to injunctive relief when the picketing is attributable to it under common-law principles of agency, is clearly in line with well-established principles of labor law adopted by this Court.

II. THE HOLDING OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH THE DECISION OF ANY OTHER UNITED STATES COURT OF APPEALS.

Point II of PMTA's *Petition* erroneously states that "there is a conflict in the circuits whether a District Court has jurisdiction to enjoin a wildcat strike". The question in this case does not involve "jurisdiction." What is involved here is the power of a federal court to issue an injunction against a labor organization and its officers under the *Boys' Markets* exception to the anti-injunction provisions of Norris-LaGuardia under circumstances where there is "wildcat" picketing for which the Union bears no responsibility under common-law rules of agency. None of the

cases cited by PMTA involving circuits other than the Third Circuit addressed themselves to this issue.[5] However, at least two other Circuits are in accord with the decision of the Third Circuit below. See *Hardline Electric, Inc. v. IBEW, Local 1543*, 680 F. 2d 622 (9th Cir. 1982), *cert. den'd.*, 459 U.S. 1079 (1983), and *Consolidated Coal Company v. United Mineworkers of America, Local 1261*, 725 F. 2d 1258 (10th Cir. 1984).[6]

III. THIS CASE DOES NOT INVOLVE SUBSTANTIAL QUESTIONS REQUIRING CONSIDERATION BY THIS COURT.

Contrary to PMTA's position, this case does not involve the authority of a federal court to enjoin a wildcat strike. What this case involves is the power of a federal court to issue an injunction against a labor organization and its officers in connection with a "wildcat strike" or "wildcat" picketing when there is no evidence of union responsibility for this wildcat activity under common-law rules of agency - the standard under which federal courts are authorized to impose liability against labor organizations under

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5. See *International Detective v. International Brotherhood of Teamsters*, 614 F.2d 29 (1st Cir. 1980), *Elevator Manufacturers' Association of New York, Inc. v. Local 1*, 689 F.2d 382 (2nd Cir. 1982), *Jacksonville Maritime Association v. ILA*, 571 F.2d 309 (5th Cir. 1978), and *Old Ben Coal Corp. v. Local Union No. 1487 of United Mineworkers of America*, 500 F.2d 950 (7th Cir. 1974).

6. The 10th Circuit in *Consolidated Coal Company* affirmed the action of the District Court of Utah in rejecting the employer's request for an injunction. The District Court reasoned:

> Plaintiff further asks that defendant be enjoined from authorizing or participating in illegal work stoppages in violation of the collective bargaining agreement. Since this Court has concluded that defendant has not instigated, authorized or condoned the work stoppages engaged in by individual union members, there is no union activity subject to injunction. . . . (500 F.Supp. 72, 77 (D. Utah, 1980)).

Section 301 of the LMRA, 29 U.S.C. Sec. 185. Since this Court's decision in *Carbon Fuel* there have been no decisions of federal courts, of which we are aware, which have attempted to impose liability of any sort - whether it be injunctive or for damages - against a labor organization or its accused officers without first giving consideration to the question of whether they bear any responsibility for the conduct in question under common-law principles of agency.

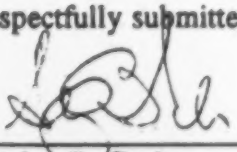
This case involves an uncontroverted finding that the defendant labor organization and officers bore no responsibility for the picketing in question under well-established common-law agency principles. Accordingly, it is clearly not a case which warrants consideration by this Court as one involving a substantial question of national labor policy.

CONCLUSION

Contrary to the Conclusion of PMTA that "The dockworkers union *attempted* to disavow any responsibility for the work stoppage", both the District Court and Court of Appeals found as a matter of fact and law that the respondent Union and its officers *did not* bear any responsibility for the picketing of 20 to 25 individuals. PMTA did not challenge these findings in either of the Courts below.

Accordingly, this case represents nothing more than a decision that an injunction may not issue against a labor organization and its officers absent a finding of responsibility for the picketing in question. Since such a holding does not conflict with decisions of this Court and is not in conflict with decisions of other Courts of Appeals, it is respectfully submitted that the *Petition* for Certiorari should be denied.

Respectfully submitted,



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SUPPLEMENTAL APPENDIX

1. **Labor Management Relations Act of 1947 ("LMRA") Secs. 301 (a), (b), (c) and (e), 29 U.S.C. Secs. 185 (a), (b), (c) and (e)**

Sec. 185 Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any6 employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district curt of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have

jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

2. **Norris-LaGuardia Act, Secs. 4 and 7 (a), 29 U.S.C. Secs. 104 and 107 (a)**

Sec. 104 Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or

other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Sec. 107 Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;